commentary on the Montreal Protocol. There may well be disputes about exemptions, about outright cheating, about Parties who might attempt to meet their consumption reduction targets by putting a more than proportional burden on imports (from other Parties) compared to domestic production, and so forth.

The ultimate test of fairness in terms of the letter of an international agreement is two-fold. First, whether the disciplines are as tight on Parties as they are on non-Parties. We have seen that, to some degree, this is not so and that, in any event, the Protocol places Parties acting jointly in the position of deciding whether to accept a non-Party's good faith efforts. Second, fairness rests in the discipline wielded by member countries against a wayward Party.

In this latter regard, the Protocol and the Vienna Convention leave much to be desired. Under the Convention, the Party complained against can effectively block all progress. First comes negotiation among interested parties, then the use of good offices or third party mediation. A member State may agree to binding arbitration or resolution by the International Court of Justice, but only if it chooses to do so. Even if a member State declares upon ratifying the Convention that it will accept arbitration if challenged, the language contains the caveat "for a dispute not resolved" through negotiation, good offices or mediation. Any party to a dispute can simply claim that one of these processes has not finished (there are no time limits established).[43] And even if Parties go to "binding" arbitration, any controversy as regards the interpretation or manner of implementation of the arbitral tribunal's award may only be submitted back to the tribunal. That is, at the end of the day, the arbitral process has no teeth. Nor does the last option under the Convention: the establishment of a conciliation commission charged with making recommendations "which the parties shall consider in good faith". Hardly a weighty stick.[44]

The Montreal Protocol dispute settlement provision is Article 8, which is just over three lines long. Clearly, the successful disciplining of Parties was not foremost in the minds of the negotiators in 1987. Over the next several years, considerable thought was given to how to structure an appropriate dispute resolution system, culminating with some modest success in 1992 in Copenhagen. The agreed non-compliance procedure establishes an Implementation Committee of ten Parties whose main task is to seek "amicable" solutions to disputes. However, the Committee must

[43] Note that the 1991 Protocol on Environmental Protection to the Antarctic Treaty usefully tightens its proceedings by giving Parties to a dispute 12 months to resolve it by consultation, failing which any single party can refer the issue to an arbitral tribunal. The problem of enforcing a tribunal's findings remains. See Protocol Articles 18-20 and the relevant appendix.

[44] Vienna Convention, Article 11; Decision I/7, Handbook, pp. 138-40.